



Temporary Variance Guidance & Form

Guidance and worksheet for organic producers requesting a temporary variance from the USDA National Organic Program

Occasionally, circumstances beyond an operation's control, such as drought or flooding, or on-farm research, may temporarily make compliance with certain organic requirements impossible.

In these situations, NOP regulations allow a temporary variance from specific production or handling requirements for a specified period. Temporary variances are reviewed and approved on a case-by-case basis by the USDA National Organic Program. They are not automatic, and producers should never assume they have a variance until the NOP approves it through their certifier.

This guidance explains when a temporary variance may be appropriate and how to request one through your organic certifier.

USDA NOP Instructions on Temporary Variances are available at:

<http://www.ams.usda.gov/sites/default/files/media/2606.pdf>

WHAT IS A TEMPORARY VARIANCE?

A temporary variance is a temporary allowance to deviate from certain USDA organic requirements because of circumstances beyond the operation's control or to accommodate on-farm research. The NOP may grant a temporary variance only for specific reasons identified in the organic regulations. Examples include:

- Natural disasters declared by the Secretary of Agriculture
- Damage caused by drought, flooding, excessive moisture, wind, hail, tornado, earthquake, wildfire, or other business interruption
- Practices used for the purpose of conducting research or trials of techniques, varieties, or ingredients used in organic production or handling

WHAT DOES NOT QUALIFY?

Temporary variances apply only to certain sections of the USDA organic regulations (§§ 205.203-205.207, 205.236-205.240, or 205.270-205.272). They cannot be granted for prohibited practices or materials, including using prohibited substances or feeding nonorganic feed to certified organic livestock. They also cannot be granted to fix a noncompliance, nor for cost or size reasons.

Disclaimer: This guidance document and the accompanying template form are designed to help producers and certifiers better understand the Temporary Variance process. Operations are not required to complete the template form to apply for a temporary variance. Likewise, certifiers may require an operation to complete their temporary variance documentation or submit additional information beyond what is outlined here.



ORGANIC FARMERS
ASSOCIATION



WESTERN ORGANIC DAIRY PRODUCERS
ALLIANCE

United States Department of Agriculture
Agricultural Marketing Service
National Organic Program
Transition to Organic Partnership Program



WHEN SHOULD YOU CONTACT YOUR CERTIFIER?

Contact your certifier as soon as you learn that an event or prolonged weather situation (i.e., drought, flooding) may prevent your operation from complying with an organic requirement. This process can be precautionary or submitted in anticipation of not meeting the standards. You cannot request a variance after you have been unable to meet the regulations (non-compliance).

Early communication allows your certifier to discuss your situation, determine whether a temporary variance for your operation may be appropriate (even if others in the same county or State have not applied), and advise you on the documentation needed to support your request for submission to the NOP.

Do not wait until your annual inspection or the end of the production or grazing season if compliance is already being affected.

HOW DOES THE TEMPORARY VARIANCE PROCESS WORK?

The general process is:

1. **Producer/Handler submits a written request** to their certifier* describing the situation and providing supporting documentation. (see provided worksheet)
2. **The certifier reviews the request** and determines whether it supports recommending a temporary variance.
3. **If appropriate, the certifier submits a written recommendation** to the NOP including supporting documentation.
4. **The NOP reviews the recommendation** within 5 business days of receipt for completeness and contacts the certifier if it needs additional supporting documentation or information. Within 10 business days of receipt, the NOP evaluates the certifier's recommendation against the allowed reasons for a variance. The NOP then recommends a decision to the AMS Administrator to grant or deny the temporary variance.
5. **The certifier notifies the operation** of the NOP's decision.
6. **The NOP publishes the temporary variance** to the NOP web page.

- Only the USDA AMS can establish a temporary variance.
- **Only a certifier can apply to the NOP for a variance.**
- Producers are encouraged to work with their certifier throughout the process.

WHAT INFORMATION SHOULD BE INCLUDED?

Your certifier may have their own worksheet or required documentation for submitting a variance request. The first step for any producer or handler is to contact their certifier and ask what information or forms they require.

If your certifier does not have a specific worksheet available, the attached worksheet and information below can guide you as you get started. A complete, detailed request will help your certifier evaluate the situation and ensure the National Organic Program (NOP) has the information needed to review and decide on the request.

YOUR REQUEST SHOULD INCLUDE:

Description of the Event

1. What happened?
2. When did it occur?
3. How long has the situation affected your operation?
4. Is the event ongoing?

Examples include drought, flooding, wildfire, excessive rainfall, severe storms, infrastructure damage, or other business interruptions.

Organic Requirement Affected

1. Identify the specific organic requirement/regulation you cannot meet. (*Note: price is not an acceptable reason for not meeting the organic standards)

Examples may include:

- a. Crop production requirements
- b. Livestock grazing or pasture requirements
- c. Handling or processing requirements
- d. Other applicable production or handling requirements allowed under the temporary variance regulations

Impact on Your Operation

1. Clearly explain how the event/issue affects your ability to comply with the organic standard and what adaptation of the regulation you CAN meet.

Examples include:

- a. Reduced pasture production because of drought (specify # days on pasture and DMI%).
- b. Flooded fields that prevented planting, harvesting, or grazing.
- c. Damaged handling or storage facilities.
- d. Loss of access to production areas.

**Operations in California may request a temporary variance from their certifier or the State Organic Program*

Other circumstances directly related to the event/issue.

Whenever possible, include dates, measurements, acreage affected, livestock numbers, production records, or other objective information.

Supporting Documentation

1. The NOP relies on the submitted documentation to evaluate temporary variance requests. The more complete your documentation, the easier it is for your certifier and the NOP to understand your situation and decide on your temporary variance request.
2. Helpful documentation may include:
 - Local weather reports or weather station data
 - U.S. Drought Monitor information
 - Irrigation information, including water allotments
 - National Weather Service reports
 - County or state emergency declarations
 - Disaster Declarations issued by the Secretary of Agriculture
 - Photographs documenting conditions (Photographs taken throughout the event are especially helpful when documenting changing field or pasture conditions.)
 - Farm maps
 - Production records
 - Grazing records
 - Feed records
 - Harvest records
 - Organic System Plan records
 - Other records demonstrating how the event/issue affected your operation
 - Are there other organic operations in your region requesting a temporary variance?

Applicable USDA Organic Regulations (7 CFR § 205)

§ 205.203 Soil fertility and crop nutrient management
§ 205.204 Seeds and planting stock practice standard
§ 205.205 Crop rotation practice standard
§ 205.206 Crop pest, weed, and disease management
§ 205.207 Wild-crop harvesting practice standard
§ 205.236 Origin of livestock
§ 205.237 Livestock feed
§ 205.238 Livestock health care practice standard
§ 205.239 Livestock living conditions
§ 205.240 Pasture practice standard
§ 205.270 Organic handling requirements
§ 205.271 Facility pest management practice standard
§ 205.272 Commingling and contact with prohibited substance prevention practice standard
§ 205.290 Temporary Variances

Explain Your Management Decisions

1. Your request should also describe the actions you took to minimize the impact while continuing to comply with the organic regulations whenever possible.

Examples include:

- a. Alternative management practices implemented
- b. Adjustments made to protect crops, livestock, or organic products
- c. Changes made to reduce losses
- d. Efforts to maintain compliance despite challenging conditions
- e. Demonstrating that reasonable management decisions were made helps provide a complete picture of the situation.

CONTINUE MAINTAINING RECORDS

Even if you anticipate requesting a temporary variance, continue maintaining complete records throughout the event/issue. Good documentation supports both your variance request and your ongoing compliance with the USDA organic regulations.

Important Reminders:

- The USDA NOP considers temporary variances individually, based on the specific facts provided for each operation; however, a certifier may submit a “Blanket Request” from one or multiple certifiers on behalf of many operations. **If there is a common regional need, inquiring about a blanket temporary variance for specific counties (or a whole state) may be the most efficient and equitable option.**
- Approval is not automatic.
- A temporary variance must be approved by the National Organic Program through your certifier.
- Continue following all applicable organic requirements until the NOP grants a temporary variance.
- Contact your certifier promptly whenever circumstances arise that may affect your compliance with the organic regulations. Not all certifiers are familiar with temporary variance procedures, so you may need to advocate for yourself if you feel a temporary variance is needed.
- If other operations in your region are experiencing similar hardship based on a shared event/issue, you may encourage them to submit a temporary variance request as well.

Timely communication and complete documentation give your certifier and the National Organic Program the information needed to evaluate your request as efficiently as possible.

USDA National Organic Program Operation Temporary Variance Request Worksheet

Complete this worksheet and submit it, along with any supporting documentation, to your certifier. This worksheet is intended to help you provide the information your certifier and the USDA National Organic Program (NOP) need to evaluate your temporary variance request. Your certifier or the NOP may request additional information during the review process.

Your certifier may have their own worksheet or required documentation for submitting a variance request. The first step for any producer or handler is to contact their certifier and ask what information or forms they require. If your certifier does not have their own specific forms to complete, the worksheet below may be a good option to begin your variance request.

Instructions:

Complete this worksheet and submit it, along with any supporting documentation, to your certifier. This worksheet is intended to help you provide the information your certifier and the USDA National Organic Program (NOP) need to evaluate your temporary variance request. Your certifier or the NOP may request additional information during the review process.

Producer Information

Operation Name

Primary Contact

NOP Certificate Number

Certification Number (from your certifier)

Phone

Email

Date Submitted

Reason for the Request

Describe the event or circumstance that is affecting your operation.

☐ Drought

☐ Flooding

☐ Excessive rainfall

☐ Wildfire

☐ Wind or storm damage

☐ Hail

☐ Natural disaster

☐ Business interruption

☐ Research or field trial

☐ Other:

Describe the event/issue:

Date(s) the event/issue occurred:

Is the event/issue ongoing? ☐ Yes

☐ No

If no, when did conditions improve?

2. Organic Requirement Affected

Which USDA organic requirement(s)/regulation(s) are affected by this event/issue?

Describe why you are unable to comply with the requirement(s):

3. Impact on Your Operation

Describe how the event/issue affected your operation and what terms you can meet. For example, the operation cannot meet 120 days grazing / 30% DMI from pasture due to drought, so they are requesting a temporary variance to graze their animals for 90 days / 20% DMI from pasture. Include as much detail as possible. Examples may include impacts to crops, livestock, pasture, processing, storage, handling activities, or other certified organic activities.

Acres affected:

Estimated dates of impact:

Fields affected:

Buildings or facilities affected:

Livestock affected:

Description of Impact, the terms you cannot meet, and what you can meet:

4. Actions Taken

Describe the actions you have taken to minimize the impact while maintaining compliance with the USDA organic regulations whenever possible.

5. Duration of Temporary Variance Needed

Please describe the requested length of time needed for the requested temporary variance. Factors determining the duration of a temporary variance include expected recovery times from natural disasters or business interruption, or the duration of the research project.

6. Supporting Documentation

Please attach copies of any documentation that supports your request. Check all that apply.

- | | |
|--|---|
| ☐ Local weather reports | ☐ National Weather Service reports |
| ☐ Emergency declarations | ☐ U.S. Drought Monitor information |
| ☐ Photographs | ☐ Production records |
| ☐ Feed records | ☐ Grazing records |
| ☐ Organic System Plan records | ☐ Harvest records |
| | ☐ Farm maps |

Other documentation:

7. Additional Information

Please provide any additional information that may help your certifier and the USDA National Organic Program evaluate your request.

Producer Certification

I certify that the information provided in this request is true and complete to the best of my knowledge. I understand that submission of this request does not constitute approval of a temporary variance and that I must continue to comply with applicable USDA organic regulations unless and until a temporary variance is approved.

Producer Signature:

Printed Name:

Date:

For Certifier Use Only

Date Request Received:

Certification Agency:

Certification Reviewer:

Certification Reviewer Email & Phone:

Additional Information Requested:

Recommendation to NOP:

☐ Recommend Approval

☐ Do Not Recommend Approval

Date Submitted to NOP:

Comments: